

REMARKS

Applicant has amended claim 77 as set forth above to correct a typographical error. No new matter has been added by way of these amendments. In view of the following remarks, reconsideration of the outstanding office action is respectfully requested.

The Office has object to claim 77 asserting that it appears the claim has a typographical error and was intended to depend off claim 25. Accordingly, Applicant has amended claim 77 to depend from claim 25 as suggested by the Office. In view of the foregoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw this objection.

The Office has rejected claims 1-2, 8, 10-14, 20, 22-26, 32, 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication No. 2003/0110234 to Egli et al. (Egli) in view of US Patent Application Publication No. 2004/0054787 to Kjellberg et al. (Kjellberg), claims 3-6, 15-18, and 27-30 under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kjellberg and further in view of US Patent No. 6,072,787 to Hamalainen et al. (Hamalainen), claims 7, 9, 19, 21, 31, and 33 under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kjellberg and further in view of US Patent Application Publication No. 2005/0015551 to Eames et al. (Eames), claims 66-67, 72-73, and 79-80 under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kjellberg and further in view of US Patent Application Publication No. 2003/0182195 to Kumar (Kumar), and claims 68, 74, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kjellberg and further in view of Kumar and further in view of US Patent Application Publication No. 2002/0143861 to Greene et al (Greene), and claims 69, 75, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Kjellberg and in further view of US Patent Application Publication No. 2005/0169467 to Risan et al (Risan).

First, Applicant respectfully traverses the Office's rejection because the Kjellberg is not prior art with respect to the above-identified patent application. The above-identified patent application claims priority to a provisional patent application filed on March 19, 2003, which predates the filing date of Kjellberg which was filed as a utility patent application on June 19, 2003. Kjellberg claims priority to several provisional patent applications filed on June 28, 2002, however the Office's current rejection has failed to

identify support in any of the provisional patent application and only cites to paragraphs in the published utility patent application which does not predate the above-identified patent application. Accordingly, the Office is respectfully requested to identify the sections in the provisional patent application(s) which support the Office's rejection and then articulate the basis for its rejection or withdraw all of the outstanding rejections of the claims.

Second, Egli, Kjellberg, Hamalainen, Eames, Kumar, Greene, and Risan, alone or in combination, do not disclose or suggest, "wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluation system to obtain, from the client system, the content presentation environment information at a time of a request for the content from the client system" as recited in claim 1, "determining from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluation system at a time of a request for the content from the client system" as recited in claim 13, or "determining from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluation system at a time of a request for the content from the client system" as recited in claim 25.

As the Office has acknowledged, Egli does not disclose an assessment system that obtains from the client system, content presentation environment information associated with the client system, wherein the content presentation environment information is based on an operating environment evaluation of the client system performed by an evaluating system to obtain, from the client system, the content environment information at a time of a request for the content from the client system. However, contrary to the Office's assertions Kjellberg does not disclose the above-noted claim limitations in paragraphs [0068], [0069], and [0105] or elsewhere.

The Office's attention is respectfully directed to FIGS. 2 and 3 and paragraphs [0068], [0069] and [0105] in Kjellberg relied upon by the Office which are set forth below:

[0068] The device capability manager 37 is capable of managing client devices in either of two categories: actual devices and generic devices. In response to client device requests, the device capability

manager 37 uses actual device information from the request and any applicable stored generic device definitions to recognize the accessing client device and its capabilities. The system administrator can define devices (or device capabilities) in either category. An actual device is a particular make and model of client device, such as "Nokia 6310". Actual devices are identified solely from incoming requests, based on the UserAgent and x-wap-profile headers in the requests, for example. A generic device is a predefined device or set of device capabilities. Examples of some generic device definitions are: all Nokia devices (e.g., "vendorname=nokia"), all devices with display size >40, and all devices which support SMS. In response to client device requests, the device capability manager 37 uses the UserAgent or x-wap-profile header to identify the actual device accessing the system and to look up its corresponding capabilities in the device information database 46, which are combined with any applicable generic device definitions to determine the capabilities of the client device. The use of this information is described further below. (Emphasis added).

[0069] It is useful now to define two types of device capabilities which the device capability manager is able to resolve: static capabilities and active capabilities. As defined in the download manager, "static" capabilities are the well-known set of attributes for a given device which are defined during pre-processing, not on-the-fly. These are associated with a client device as identified in the UserAgent or x-wap-profile headers. Generic devices, as defined above, only have static capabilities. "Active" capabilities represent a dynamic collection of attributes extracted during an interaction between the client device and the download manager, typically from the Accept headers. These two types of device capabilities are stored separately in the device information database 46. (Emphasis added).

...

[0105] The provisioning model used to provision a particular product in a particular client device is based on the device capabilities of the client device as well as the content type of the best-fit implementation. A provisioning "model", in this context, includes a particular provisioning protocol and a content packaging format. The ability to deliver the "best-fit" content based on "active" (dynamic) capabilities of a device is advantageous. Content provisioning provides the second part of targeting products to a given subscriber based on his device's capabilities. Whereas product discovery as described above relies on the "static" capabilities, provisioning relies on the "active" capabilities to determine the exact and often new enhancements of the client device. Given that a device can be fitted or enhanced with new features not described by the default set of capabilities originally intended for the device, the download manager

1 can use these active capabilities to find the best match content to provision to the device.

As illustrated in FIGS. 2 and 3 and discussed in the paragraphs above, Kjellberg only discloses or suggests using actual device information in the received request and applicable stored information. In other words, Kjellberg just relies on the received request and stored information from a database. The “active” capabilities referred to in Kjellberg come from the received request. There simply is no teaching or suggestion in Kjellberg of an operating environment evaluation of the client system performed by an evaluation system at a time of a request for the content from the client system. Similarly, the other cited references do not disclose or suggest these claim limitations.

In view of the foregoing amendments and remarks, the Office is respectfully requested to reconsider and withdraw the rejection of claims 1, 13, and 25. Since claims 2-12 and 64-69 depend from and contain the limitations of claim 1, claims 14-24 and 70-77 depend from and contain the limitations of claim 13, and claims 26-36 and 78-83 depend from and contain the limitations of claim 25, they are distinguishable over the cited references and are patentable in the same manner as claims 1, 13, and 25.

In view of all of the foregoing, Applicant submits that this case is in condition for allowance and such allowance is earnestly solicited

Respectfully submitted,

Date: February 3, 2010

/Gunnar G. Leinberg/
Gunnar G. Leinberg
Registration No. 35,584

NIXON PEABODY LLP
1100 Clinton Square
Rochester, New York 14604
Telephone: (585) 263-1014
Facsimile: (585) 263-1600